



COMMONWEALTH of VIRGINIA
DEPARTMENT OF ENVIRONMENTAL QUALITY

Valley Regional Office

W. Tayloe Murphy, Jr.
Secretary of Natural Resources

Street address: 4411 Early Road, Harrisonburg, Virginia 22801
Mailing address: P.O. Box 3000, Harrisonburg, Virginia 22801-9519
Telephone (540)574-7800 Fax (540)574-7878
www.deq.state.va.us

Robert G. Burnley
Director

R. Bradley Chewning, P.E.
Valley Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION
A SPECIAL ORDER ISSUED TO
H. N. FUNKHOUSER and CO.

UST Facility at 5116 Main Street, Stephens City, VA
Facility Identification No. 6010799

SECTION A: Purpose

This is a Special Order by consent issued under the authority of Va. Code §§ 62.1-44.15 (8a) and (8d) between the State Water Control Board and H. N. Funkhouser and Co. to resolve certain violations of the State Water Control Law and regulations at H. N. Funkhouser and Co.'s Underground Storage Tank Facility located at 5116 Main Street in Stephens City, Frederick County, Virginia.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. "Board" means the State Water Control Board, a permanent citizen's board of the Commonwealth of Virginia as described in Code §§ 10.1-1184 and 62.1-44.7.
2. "Code" means the Code of Virginia (1950), as amended.
3. "UST" means underground storage tank as further defined in 9 VAC 25-580 10.
4. "Funkhouser" means H. N. Funkhouser and Co., the UST owner within the meaning of Virginia Code § 62.1-44.34:8.
5. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Code § 10.1-1183.
6. "Director" means the Director of the Department of Environmental Quality.

7. "Facility" means the retail gasoline station and USTs owned and operated by Funkhouser located at 5116 Main Street, Stephens City, Frederick County, Virginia. The Facility's USTs are further identified by UST numbers: 2, 3, 4, 5, 6, 7, 8, 9 & P1.
8. "Order" means this document, also known as a Consent Special Order.
9. "Regional Office" means the Valley Regional Office of the Department.
10. "Regulation" means 9 VAC 25-580-10 *et seq.* (Underground Storage Tanks: Technical Standards and Corrective Action Requirements) relating to upgrading of existing UST systems, registration of tanks, closure of non-compliant tanks, and release detection requirements.
11. "Sti-P3 tank" means a UST certified by the Steel Tank Institute to have three different methods of corrosion protection.
12. "Form 7530" means the UST notification form used by the DEQ to register and track USTs for proper operation, closure and ownership purposes. See 9 VAC 25-580-70.

SECTION C: Findings of Fact and Conclusions of Law

1. The Regulation, at 9 VAC 25-580-10 *et seq.*, requires that the USTs at the Facility meet final, specific performance requirements for leak detection, spill and overfill protection, and corrosion protection by December 22, 1998.
2. Funkhouser is the owner of the USTs at this Facility within the meaning of Virginia Code § 62.1-44.34:8.
3. On February 20, 2002, DEQ staff conducted a formal inspection of the Facility. The following deficiencies were noted:
 - a. Testing of the cathodic protection (CP) system installed on the USTs had not been performed in apparent violation of 9 VAC 25-580-90 ¶2.
 - b. Piping associated with USTs #6, 7, 8 & 9 was in contact with the ground and had not been protected from corrosion in apparent violation of 9 VAC 25-580-60 ¶3. Funkhouser contends that anodes had previously been installed on the piping to protect it from corrosion, but that they had been expended and were no longer offering any protection to the piping.

- c. UST notification information was incorrect in apparent violation of 9 VAC 25-580-70 ¶A.
- d. UST #9 had not been upgraded with spill and overfill prevention in apparent violation of 9 VAC 25-580-60 ¶4.
- e. UST #P1 had not been properly closed in accordance with 9 VAC 25-280-320 & -330.

As a result of this formal inspection, DEQ staff sent a Warning Letter (No. 02-08-VRO-002) to Funkhouser on August 15, 2002, for these apparent violations of the Regulations. The letter requested that Funkhouser respond by August 23, 2002, and included a copy of the formal inspection results, detailing the apparent violations noted above. It also requested that Funkhouser contact DEQ to discuss resolution of noncompliance by way of a Letter of Agreement. The inspection also resulted in the discovery of a confirmed release of petroleum at the Facility, referenced by PC number 2002-6072. This release was properly investigated by Funkhouser and closed by DEQ staff on January 10, 2003.

- 4. DEQ staff received passing UST and piping release detection results for the Facility for the months of July through December 2002 and for January and February 2003.
- 5. On April 29, 2003, DEQ staff received documentation from Funkhouser's contractor confirming that the piping associated with USTs numbers: 6, 7 & 8, was not adequately protected from corrosion. The test report confirmed that the piping associated with UST number 9 was adequately protected from corrosion.
- 6. On May 12 2003, Funkhouser notified DEQ staff of a confirmed release with gasoline UST number 6, as referenced by PC number 2003-6125.
- 7. On May 14, 2003, DEQ staff met with Funkhouser to review the outstanding violations with the Regulation at the Facility. These included all those previously noted in paragraph three. A written summary of these alleged violations was provided to Funkhouser during the meeting.
- 8. On May 19, 2003, DEQ staff received a Form 7530 as partial documentation to close UST #P1. The necessary site assessment documentation was not received with the Form 7530.
- 9. On July 23, 2003, DEQ staff issued NOV No. 03-07-VRO-2 to Funkhouser, for the apparent continuing violation of the Regulation on USTs number 2, 3, 4, 5, 6, 7, 8, 9 & P1 and for apparent violation of 9 VAC 25-590-10 et seq. (UST Financial

Responsibility Requirements). The NOV requested that Funkhouser respond to the Department by August 2, 2003.

10. On July 30, 2003, DEQ staff received an e-mail communication from Funkhouser which indicated their intent to remove the existing USTs from the facility and replace them with new USTs.
11. On July 31, 2003, DEQ staff contacted Funkhouser via telephone and was again informed of their intention to replace the existing USTs with new ones. Additionally, Funkhouser informed staff that it had submitted the necessary closure documentation for PC number 2003-6125. A file review revealed that the DEQ had not received that information.
12. On August 20, 2003, DEQ staff sent Funkhouser an approval letter stating that it had met its financial responsibility requirements as required under 9 VAC 25-590-10 et.seq.
13. Having failed to receive a Release Investigation report for PC #2003-6125, DEQ staff issued Warning Letter #03-08-VRO-04 to Funkhouser on August 13, 2003, requesting the submission of the report by September 15, 2003.
14. On September 9, 2003, DEQ staff received a satisfactory Release Investigation report indicating that no further action was necessary for PC #2003-6125. As a result, DEQ staff closed the case on September 23, 2003.
15. On October 2, 2003, DEQ staff met with Funkhouser to discuss possible remedies to the situation including a corrective action plan and the settlement of past violations.
16. On October 14, 2003, DEQ staff received cathodic protection test results, performed on March 15, 2001, confirming that two of the USTs were adequately protected from corrosion.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code §§ 62.1-44.15 (8a) and (8d), orders Funkhouser and Funkhouser agrees that:

1. To remedy the violations described above and bring the Facility into compliance with the Regulation, Funkhouser shall perform the actions described in Appendix A to the Order.

2. Funkhouser shall pay a civil charge of \$11,987.00, within 30 days of the effective date of the Order. Payment shall be by check, certified check, money order, or cashier's check payable to "Treasurer of the Commonwealth of Virginia" and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

3. Funkhouser shall also include its Federal Identification Number with the civil charge payment and shall note on the payment that it is being made pursuant to this Order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Funkhouser, for good cause shown by Funkhouser, or on its own motion after notice and opportunity to be heard.
2. This Order addresses only those violations specifically identified herein. This Order shall not preclude the Board or Director from taking any action authorized by law, including, but not limited to: (1) taking any action regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the Facility as may be authorized by law; and/or (3) taking subsequent action to enforce the terms of this Order. Nothing herein shall affect appropriate enforcement actions by other federal, state, or local regulatory authority, whether or not arising out of the same or similar facts.
3. This Order is made by agreement and with the consent of the parties and does not constitute a finding, adjudication or admission of violation of any federal, state, or local law, rule, or regulation or any allegations contained herein. For the purpose of this Order only, Funkhouser admits the jurisdictional allegations in the Order.
4. Funkhouser consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Funkhouser declares it has received fair and due process under the Virginia Administrative Process Act, Code §§ 2.2-4000 *et seq.*, and the State Water Control Law, and she waives the right to any hearing or other administrative proceeding authorized or required by law or regulation and to judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a

waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.

6. Failure by Funkhouser to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall act to waive or bar the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Funkhouser shall be responsible for failing to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other act of God, war, strike, or such other occurrence. Funkhouser must show that such circumstances resulting in noncompliance were beyond its control and not due to a lack of good faith or diligence on its part. Funkhouser shall notify the Director of the Regional Office in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth:
 - a. The reasons for the delay or noncompliance;
 - b. The projected duration of such delay or noncompliance;
 - c. The measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. The timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Director of the Regional Office in writing within 10 days of learning of any condition listed above, which Funkhouser intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim of inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees, and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Funkhouser. Notwithstanding the foregoing, Funkhouser agrees to be

bound by any compliance date, which precedes the effective date of this Order.

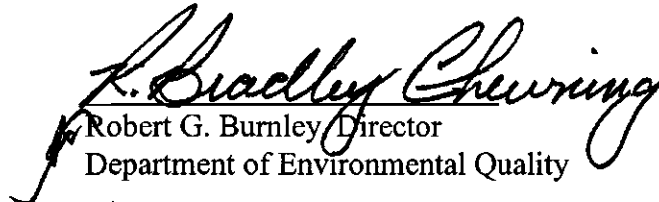
11. This Order shall continue in effect until:

- a. Funkhouser petitions the Regional Director to terminate the Order after it has completed all requirements of the Order and the Director or his designee approves the termination of the Order; or
- b. The Director or the Board terminates this Order in his or its whole discretion upon 30 days written notice to Funkhouser

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Funkhouser from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. By its signature below, Funkhouser voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 25 March day of 2004, 2003.


Robert G. Burnley, Director
Department of Environmental Quality

The terms and conditions of the Order are voluntarily accepted by Funkhouser:

Date: Oct 27, 2003

By: 

Robert W. Claytor

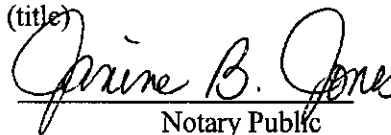
Title: President

Commonwealth of Virginia, City/County of Winchester

The foregoing instrument was acknowledged before me this 27 day of October, 2003, by

Robert W. Claytor of Funkhouser, President, on behalf of the corporation.
(name) (title)

October 27, 2003
Date


Opriene B. Jones
Notary Public

My commission expires:

April 30, 2007

Appendix A
H. N. Funkhouser and Co.
UST Facility at 5116 Main Street, Stephens City, VA

For USTs # P1, 2, 3, 4, 5, 6, 7, 8, & 9 Funkhouser shall:

A. By November 3, 2003:

1. Permanently close the USTs in accordance with the requirements of 9 VAC 25-580-320 and 330.
2. Submit required closure documentation for the USTs to the DEQ.
3. If any evidence of a release is discovered, Funkhouser will report such evidence to the DEQ within 24 hours of discovery.

B. By December 1, 2003:

1. Submit a correct and complete Form 7530 for the newly installed USTs.
2. Submit supporting documentation confirming the material of construction for all newly installed USTs and associated piping.

C. By January 1, 2003

1. Submit a copy of passing release detection records for each of the newly installed USTs and its associated piping for the month of December 2003.